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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION  
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14 IN RE APPLE & AT&TM ANTI-TRUST  
15 LITIGATION

CASE NO. C 07-5152 JW

**UNOPPOSED MOTION TO CONTINUE  
HEARING ON PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION AND APPLE'S  
MOTION FOR SUMMARY JUDGMENT**

**FILED PURSUANT TO CIVIL LOCAL  
RULE 6-3**

1 The Court recently, *sua sponte*, moved the hearing on plaintiffs' motion for class  
 2 certification (Docket No. 237) and defendant Apple Inc.'s motion for summary judgment (Docket  
 3 No. 265) from May 10, 2010 to May 17, 2010. Defendants Apple and AT&T Mobility LLC  
 4 ("ATTM") respectfully file this unopposed motion to continue the hearing on those motions to a  
 5 later date at the Court's convenience, due to the unavailability of Apple's lead counsel on May 17.

6 The previous time modifications as to these hearings are as follows:

- 7 • By its order of August 20, 2009, the Court rescheduled the class certification  
 8 hearing from December 7, 2009 to March 22, 2010 (Docket No. 199).
- 9 • By its order of October 16, 2009, the Court set the class certification hearing for  
 10 April 26, 2010 (Docket No. 211).
- 11 • By its order of December 16, 2009, the Court set the class certification hearing for  
 12 May 10, 2009 (Docket No. 231).
- 13 • Apple filed its Motion for Summary Judgment (Docket No. 265) on February 12,  
 14 2010, and noticed a hearing date for this motion of April 26, 2010. On April 7,  
 15 2010, the Court continued the hearing on Apple's motion for summary judgment to  
 16 May 10, 2010 (Docket No. 394).
- 17 • On April 28, 2010, the Court continued the hearing on plaintiffs' class certification  
 18 motion, Apple's motion for summary judgment, and plaintiffs Holman and  
 19 Rivello's motion to appoint lead counsel to May 17, 2010 (Docket No. 437).

20 As Apple indicated in its letter to the Court of April 30 (Docket No. 444), the new May 17,  
 21 2010 hearing date for these motions, as set by the Court's April 28, 2010 *sua sponte* Notice  
 22 Continuing Motion Hearing (Docket No. 437), directly conflicts with a long-scheduled hearing  
 23 that Daniel M. Wall, lead counsel for Apple, will be arguing before the Honorable James V. Selna  
 24 in the Central District, in Santa Ana, California.

25 A continuance of the hearing to permit Mr. Wall's participation is essential. The hearing  
 26 on the class certification and summary judgment motions are critical hearings in this case.  
 27 Apple's lead counsel in this case, Mr. Wall, is uniquely conversant with Apple's defenses to class  
 28 certification and the issues raised on Apple's motion for summary judgment and his presence at  
 these important hearing is essential to the effective advocacy of Apple's position with respect to  
 these issues.

1 A continuance is also unopposed. Counsel for Apple has conferred with plaintiffs' interim  
 2 lead counsel, Mark Rifkin, who does not oppose scheduling a hearing on these two motions for a  
 3 later date in May. Moreover, because nothing has been scheduled in this case that post-dates this  
 4 hearing, continuing the May 17, 2010 hearing on these two motions will not disrupt the rest of this  
 5 case's schedule. Accordingly, Apple and ATTM respectfully request that the Court grant the  
 6 motion to continue the hearing on plaintiffs' motion for class certification and Apple's motion for  
 7 summary judgment.

8 In their April 27, 2010 letter requesting an evidentiary hearing on the class certification  
 9 motion, defendants respectfully requested that the Court hold a telephonic conference to discuss  
 10 and finalize the schedule on these hearings. Should the court be willing to entertain such a  
 11 conference, the parties can be prepared to offer dates all parties are available for such a hearing.

12 .  
 13 Dated: May 7, 2010

LATHAM & WATKINS LLP

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 15 By /s/ Sadik Huseny  
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